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July 6, 2018

VIA ECF

Hon. Gary L. Sharpe, U.S.D.J.
James T. Foley U.S. Courthouse
445 Broadway, Room 112
Albany, New York 12207

Re: Warner v. StarKist Co., Case No. 1:18-cv-00406-GLS-ATB

Dear Judge Sharpe:

We represent plaintiff Abraham Jacob Warner ("Plaintiff") in the above-entitled action. On June 29, 2018, defendant StarKist Co. ("Defendant") filed a reply brief in further support of its motion to dismiss Plaintiff's complaint (ECF No. 18). Because that reply brief improperly raises new arguments not asserted in Defendant's opening brief, Plaintiff respectfully requests leave to file the enclosed proposed four-page sur-reply. In the alternative, Plaintiff respectfully requests that the Court strike the relevant portions of Defendant's reply brief or decline to consider the improper new arguments.

In its reply brief, for the first time, Defendant argues that controlling Second Circuit precedent precludes Plaintiff from seeking injunctive relief barring the sale of the products at issue with false and misleading labels. *See* ECF No. 18 at 6. Defendant also argues for the first time that New York rules of statutory interpretation preclude a finding of a private right of action under New York Agriculture and Markets Law § 198, *et seq.* *See* ECF No. 18 at 7-8. There is no merit to either of these new arguments. However, because they were first raised in Defendant's reply brief, Plaintiff did not have an opportunity to address these arguments.

The enclosed proposed sur-reply is limited to discussions of these two new arguments. Plaintiff respectfully requests that he be granted leave to file this sur-reply, or, alternatively, that the Court either strike section III of Defendant's reply brief or decline to consider Defendant's new arguments.

Respectfully submitted,



Bradley F. Silverman

Enclosure

cc: All counsel of record